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12 **UNITED STATES DISTRICT COURT**  
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14  
15 **U.S. Commodity Futures Trading**  
16 **Commission,**

17 **Plaintiff,**

18 **vs.**

19 **Douglas Elsworth Wilson, Elsworth Berg**  
20 **Capital Management LLC, Elsworth Berg**  
21 **Inc., and Elsworth Berg FX LLC,**

22 **Defendants.**  
23  
24

**Civil Action No: '11CV1651 WQHBLM**

**Judge:**

**COMPLAINT FOR INJUNCTIVE**  
**AND OTHER EQUITABLE RELIEF**  
**AND PENALTIES UNDER THE**  
**COMMODITY EXCHANGE ACT**  
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1 The U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”), by and  
2 through its attorneys, hereby alleges as follows:

3 **I. Summary**

4 1. Beginning no later than February 2006, Defendants Douglas Elsworth Wilson  
5 (“Wilson”), Elsworth Berg Capital Management LLC (“EBCM”), Elsworth Berg Inc. (“EBI”),  
6 and Elsworth Berg FX LLC (“EBFX”) solicited at least \$4.4 million from over 60 customers to  
7 trade, among other financial instruments, foreign currency (“forex”) and commodity futures  
8 contracts (“futures”). Defendants traded customer funds in several different trading products  
9 including the Velocity Trading Group LLC (“Velocity”), a commodity pool; Vortex Currency  
10 Group LLC (“Vortex”), a forex trading pool; and Elsworth Berg FX Managed Accounts  
11 (“EBFXMA”), a program that managed individual forex client trading accounts (collectively,  
12 the “Elsworth Products”).  
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14 2. Defendants willfully or recklessly misrepresented to customers and prospective  
15 customers that regardless of the Elsworth Products’ performance trading high-risk financial  
16 instruments, the return of their customers’ investment principal was “secured” or “guaranteed” at  
17 the end of a five-year period through use of a purportedly innovative “Collateral Reserve”  
18 structure. Through the “Collateral Reserve,” a 30% portion of each customer’s initial  
19 contribution to the Elsworth Products was to be invested in a pool of life insurance policies that  
20 would purportedly increase in value to the point that they would cover any trading losses  
21 generated in trading the remaining 70% of customer contributions. The policies held by the  
22 Collateral Reserve “matured” upon the death of an insured, entitling the Collateral Reserve to the  
23 face value of the policy.  
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25 3. The assets held in the Collateral Reserve, however, could not guarantee  
26 Defendants’ ability to make their customers whole, because the value of the Collateral Reserve  
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1 assets depended in large part on the unforeseeable timing of the deaths of a very small number of  
2 insureds.

3 4. The Elsworth Products' trading activities resulted in significant losses. While  
4 EBCM and EBI initially paid the Collateral Reserve life insurance premiums for several years  
5 without any of its policies maturing, they eventually stopped paying policy premiums. By  
6 January 2008, all but one of the Collateral Reserve's policies had lapsed, and the remaining  
7 policy could not cover the trading losses that it purportedly secured. EBCM, by and through  
8 Wilson, failed to disclose this material fact to Elsworth Product customers.  
9

10 5. In the months following these policy lapses, from May through September 2008,  
11 EBCM took approximately \$72,000 in customer funds that certain EBCM customers wanted to  
12 transfer into the Velocity futures pool, and misappropriated them for other purposes. From at  
13 least June 2008 to December 2009, EBCM also issued Velocity pool participant account  
14 statements that falsely reflected that the money had in fact been transferred, falsely overstating  
15 the value of participant interests in the pool.

16 6. Furthermore, EBCM and Wilson each have acted in a capacity requiring  
17 registration with the Commission without the benefit of registration. Velocity operated as a  
18 commodity pool under the Act, while EBCM acted as Velocity's commodity pool operator  
19 ("CPO") and Wilson served as an associated person ("AP") of EBCM. With certain exceptions  
20 not relevant here, both CPOs and APs are required to register under the Act, which EBCM and  
21 Wilson failed to do.  
22

23 7. By virtue of this conduct and the conduct described further below, Defendants  
24 have violated the Commodity Exchange Act ("Act"), as amended by the Food, Conservation, and  
25 Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008  
26 ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008). Unless restrained and  
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1 enjoined by this Court, Defendants are likely to engage in the acts and practices alleged in this  
2 complaint, or in similar acts and practices. The CFTC accordingly brings this action to enjoin  
3 Defendants' unlawful acts and practices and to compel their compliance with the Act. In  
4 addition, the CFTC seeks restitution, disgorgement, civil monetary penalties, permanent trading  
5 and registration bans, and such other statutory or equitable relief as this Court may deem  
6 necessary or appropriate.

## 7 **II. Jurisdiction and Venue**

8  
9 8. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act,  
10 7 U.S.C. § 13a-1(a) (2006). Section 6c(a) of the Act authorizes the CFTC to seek injunctive  
11 relief against any person whenever it shall appear to the CFTC that such person has engaged, is  
12 engaging or is about to engage in any act or practice constituting a violation of any provision of  
13 the Act or any rule, regulation or order promulgated thereunder.

14 9. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C.  
15 § 13a-1(e) (2006), because Defendants transacted business in this District, Wilson resides in this  
16 District, and the acts and practices in violation of the Act have occurred, are occurring or are  
17 about to occur within this District.

## 18 **III. The Parties**

19  
20 10. Plaintiff **Commodity Futures Trading Commission** is an independent federal  
21 regulatory agency that is charged by Congress with administering and enforcing the Act;  
22 7 U.S.C. §§ 1 *et seq.*, as amended by the CRA and the Dodd-Frank Wall Street Reform and  
23 Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall  
24 Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted  
25 July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.*, and the regulations promulgated  
26 thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

1           11.     Defendant **Elsworth Berg Capital Management LLC** (“EBCM”) is a suspended  
2 California limited liability company formed in August 2001 with a business address in San  
3 Diego, California. EBCM’s principals were Wilson, William B. Settles (“Settles”), and (for a  
4 portion of the company’s existence) Lawrence E. Freeman (“Freeman”). EBCM acted as a CPO  
5 of the Velocity pool. EBCM also controlled and managed the Vortex pool, which engaged in  
6 forex trading. EBCM was at one time a California-registered Investment Adviser, but its  
7 investment adviser certificate was summarily revoked by the California Corporations  
8 Commissioner on November 4, 2010. EBCM has never been registered with the Commission in  
9 any capacity.  
10

11           12.     Defendant **Elsworth Berg Inc.** (“EBI”) is a former Nevada corporation formed in  
12 August 2001 with a business address in San Diego, California. EBI’s current registration status  
13 with Nevada is “revoked.” EBI’s principals were Wilson, Settles, and (for a portion of the  
14 company’s existence) Freeman. Among other business activities, EBI held assets for the  
15 Collateral Reserve portion of customer investments in the Elsworth Products. EBI has never  
16 been registered with the Commission in any capacity.  
17

18           13.     Defendant **Elsworth Berg FX LLC** is a California limited liability company  
19 formed in June 2007 with a business address in San Diego, California. EBFX’s principals are  
20 Wilson and Settles. From at least July 2007 through January 2010, EBFX controlled and  
21 managed EBFXMA by, among other activities, using client funds to trade individual forex  
22 accounts on their behalf. EBFX has never been registered with the Commission in any capacity.  
23

24           14.     Defendant **Douglas Elsworth Wilson** is a co-founder of EBCM, EBI, and EBFX.  
25 He has served as President of EBCM and EBI, as a Member of Elsworth Berg FX LLC and  
26 Vortex Currency Group LLC, and as a Manager of Velocity Trading Group LLC. For the entire  
27 period of their existence, Wilson was an officer, director, and/or partner in EBCM, EBI, and  
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1 EBFX, and controlled all three entities. Wilson resides in Poway, California, and has never been  
2 registered with the Commission in any capacity.

3 **IV. Statutory Background**

4 15. A “commodity pool” is defined in Commission Regulation (“Regulation”)  
5 4.10(d)(1), 17 C.F.R. § 4.10(d)(1) (2011), as any investment trust, syndicate or similar form of  
6 enterprise operated for the purpose of trading commodity interests.

7  
8 16. A CPO is defined in Section 1a(5) of the Act, 7 U.S.C. § 1(a)(5) (2006), as any  
9 person engaged in a business that is of the nature of an investment trust, syndicate or similar  
10 form of enterprise and who, in connection therewith, solicits, accepts or receives from others  
11 funds, securities or property, either directly or through capital contributions, the sale of stock or  
12 other forms of securities or otherwise, for the purpose of trading in any commodity for future  
13 delivery on or subject to the rules of any contract market.

14 17. An AP of a CPO is defined in Regulation 1.3(aa)(3), 17 C.F.R. § 1.3(aa)(3)  
15 (2011), in relevant part, as any natural person associated with a CPO “as a partner, officer,  
16 employee, consultant, or agent (or any natural person occupying a similar status or performing  
17 similar functions), in any capacity which involves (i) the solicitation of funds, securities, or  
18 property for a participation in a commodity pool or (ii) the supervision of any person or persons  
19 so engaged.”

20  
21 18. A “participant” is defined in Regulation 4.10(c), 17 C.F.R. § 4.10(c) (2011), as  
22 any person who has any direct financial interest in a commodity pool.



1 investment holding companies, or investment bank holding companies, or the associated persons  
2 of financial institutions, registered broker-dealers, insurance companies, financial holding  
3 companies, or investment bank holding companies.

4 25. Most or all of Defendants' customers were not "eligible contract participants" as  
5 that term is defined in Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12) (2006) (an "eligible  
6 contract participant," as relevant here, is an individual with total assets in excess of:

7 (i) \$10 million, or (ii) \$5 million and who enters the transaction "to manage the risk associated  
8 with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the  
9 individual").

10  
11 26. The Vortex and EBFXMA forex transactions were entered into on a leveraged or  
12 margined basis. Vortex and EBFXMA were required to provide only a percentage of the value  
13 of the forex contracts they purchased.

14 27. The Vortex and EBFXMA forex transactions neither resulted in delivery within  
15 two days nor created an enforceable obligation to deliver between a seller and a buyer who had  
16 the ability to deliver and accept delivery, respectively, in connection with their lines of business.  
17 Instead, these forex transactions remained open from day to day and ultimately were offset  
18 without anyone making or taking delivery of actual currency (or facing an obligation to do so).

19  
20 **C. The Fraudulent Collateral Reserve Structure**

21 28. The Elsworth Products all used a "collateralized" structure that purportedly  
22 "secured" customer investments by placing 30% of each customer's investment in a Collateral  
23 Reserve account. The remaining 70% of customer investments were put into the customer's  
24 "trading account" and were used to trade financial instruments including forex, futures, and  
25 equity options. Defendants represented that regardless of the trading performance, through the  
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1 operation of the Collateral Reserve, customers would at a minimum receive a return of their  
2 principal investment amount five years after they invested.

3 29. Defendants further represented that following a one-year "lock-up period,"  
4 Elsworth Product customers requesting a full withdrawal of their investment would receive the  
5 entire balance of their trading account plus the current "surrender value" of their Collateral  
6 Reserve. Defendants represented that the surrender value of the Collateral Reserve was 20% of  
7 the initial Collateral Reserve contribution multiplied by the number of full years that the  
8 customer had been invested in an Elsworth Product.  
9

10 30. In their solicitation materials for the Elsworth Products, Defendants repeatedly  
11 assured customers that they could not lose money by investing in the Elsworth Products,  
12 including by describing the products as "Principal Secured," and by explaining that the Collateral  
13 Reserve provided "the security of a 100% collateralized principal guarantee."  
14

15 31. The Collateral Reserve assets consisted of cash and life insurance policies on third  
16 parties that were largely held by EBI, which acquired them through life settlement transactions.  
17 A life settlement is a transaction in which an insurance policy owner sells a life insurance policy  
18 to a third party for an amount that exceeds the policy's cash surrender value (the amount an  
19 insurance company would pay an insured for the policy), but is less than the expected death  
20 benefit of the policy.

21 32. Following a life settlement transaction, life settlement investors must pay periodic  
22 premiums to keep the policy active while awaiting maturity of the policy through the death of the  
23 insured.

24 33. The number of life insurance policies held by the Collateral Reserve varied over  
25 time, but never exceeded five policies.  
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1           34.     The same Collateral Reserve assets were used by the Velocity, Vortex, and  
2 EBFXMA products, so customer investments in all three of these products were purportedly  
3 secured or guaranteed by the same assets.

4           35.     If the Collateral Reserve were required to cover substantial trading losses by  
5 fulfilling its obligations to its customers as described above, some, if not all, of Defendants'  
6 policies would need to mature before those obligations accrued.

7           36.     Defendants failed to perform or obtain actuarial analysis sufficient to determine  
8 the likelihood that the insureds of the Collateral Reserve's five policies would die "in time" to  
9 satisfy the obligations of the Collateral Reserve. Defendants had no assurance that the insureds  
10 of the Collateral Reserve's limited number of policies would die before Collateral Reserve  
11 obligations accrued.

12           37.     Defendants willfully or recklessly misrepresented to customers and prospective  
13 customers that the Collateral Reserve would guarantee or secure customer investments, and, as a  
14 result, misrepresented the risk of loss associated with the Elsworth Products.

15           38.     EBCM's partners were jointly responsible for developing the flawed collateral  
16 reserve structure. EBCM partner Lawrence E. Freeman was EBCM's purported expert on life  
17 settlement policies, developed the "70/30 split" between the Collateral Reserve and trading  
18 account assets, and later publicly claimed to have "developed the first collateralized currency  
19 trading platform to protect investors' funds from losses."  
20

21           39.     On June 26, 2007, Freeman resigned and withdrew as a partner in all EBCM-  
22 related entities. Wilson was intimately familiar with the structure and operations of the  
23 Collateral Reserve, and after Mr. Freeman's resignation continued to make representations to  
24 customers and potential customers concerning the "security" the Collateral Reserve purportedly  
25 provided.  
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1 **D. The Fraudulent Collateral Reserve Structure Failed**

2 40. The Velocity and Vortex trading accounts suffered heavy trading losses. The  
3 Vortex trading account suffered losses of over 75% from February 2006 to November 2008. The  
4 Velocity trading account suffered losses of over 98% from October 2006 to June 2009.

5 41. The poor trading performance of the Velocity and Vortex products led  
6 participants to withdraw their funds, requiring EBCM and EBI to redeem to those participants  
7 the “vested” portion of their Collateral Reserve accounts. The Collateral Reserve assets  
8 dwindled as a result. By January 2009, EBCM and EBI were not redeeming the “vested” portion  
9 of the Collateral Reserve to customers who withdrew their accounts in full.  
10

11 42. EBCM and EBI also eventually failed to make premium payments necessary to  
12 keep four of the Collateral Reserve’s five life insurance policies in force. As a result, by January  
13 2008, all but one of the life insurance policies lapsed, and the Collateral Reserve was no longer  
14 entitled to any payment from the lapsed policies upon death of an insured.

15 43. The face value on the policy that remained in force was \$1 million. Because  
16 trading losses in collateralized accounts already exceeded \$1 million in January 2008,  
17 Defendants knew at that time that the Collateral Reserve could not cover its guarantee  
18 obligations to Elsworth Product customers even if that single remaining policy matured.

19 44. Despite this knowledge, Defendants willfully or recklessly failed to disclose to  
20 customers of the Elsworth Products that the Collateral Reserve was unable to satisfy the  
21 Elsworth Products’ “principal guarantee.”  
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23 45. Instead, Defendants continued to affirmatively misrepresent to customers of the  
24 Elsworth Products that they would receive a return of their principal investment after five years.  
25 For example, in summer and fall of 2008 and as late as February of 2009, Wilson wrote letters to  
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1 Vortex participants assuring them that they would receive their Collateral Reserve balance plus a  
2 return of their trading losses on the five-year anniversary of their initial investment.

3 46. Furthermore, in 2009, EBCM issued account statements to Velocity and Vortex  
4 participants that listed the amount of trading losses as “Collateral Offset Due,” and listed the five  
5 year anniversary of participants’ initial contributions as the “Collateral Reserve Maturity Date.”  
6 These account statements failed to include any accompanying disclosure that the Collateral  
7 Reserve could not satisfy its guarantee obligations and that EBCM had no reasonable expectation  
8 of returning trading losses on a participant’s “maturity date.”  
9

10 47. From May 2008 through November 2008, EBCM also accepted funds from at  
11 least eight new Velocity futures pool participants and EBFX accepted two new collateralized  
12 EBFXMA clients without disclosing the inability of the Collateral Reserve to satisfy its  
13 guarantee obligations.

14 48. Furthermore, EBFX represented to at least 20 additional EBFXMA clients who  
15 invested after January 2008 that their investments would be secured by a new so-called  
16 “Cumulative Trust Deposit” Collateral Reserve option in which the client agreed to pay extra  
17 fees for every forex trade executed in their account over a period of five years (rather than the  
18 “traditional” 30% Collateral Reserve contribution) in order to “collateralize” their accounts.  
19 Despite the new name assigned to this option, it relied on the same Collateral Reserve assets  
20 used to “collateralize” previous Elsworth Product customers.  
21

22 49. Consequently, Wilson, EBCM, and EBFX willfully or recklessly failed to  
23 disclose to customers of the Velocity and EBFXMA products who invested after January 2008  
24 that the Collateral Reserve purportedly “securing” their investment was unable to fulfill that  
25 function.  
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1 **E. EBCM and Wilson Misappropriated Customer Funds**

2 50. Additionally, from approximately May 2008 through November 2008, eight  
3 customers with accounts in other EBCM investment vehicles requested transfer of approximately  
4 \$72,000 into the Velocity pool. None of these funds were ever traded in the Velocity pool as the  
5 customers intended. EBCM instead misappropriated these funds and used them for other  
6 purposes.

7 **F. EBCM Sent Velocity Pool Participants False Statements**

8 51. From at least June 2008 through December 2009, EBCM issued periodic  
9 statements to the Velocity pool participants that reflected a certain cash value of their shares of  
10 the pool. The cash value of the accounts inaccurately represented that the roughly \$72,000 that  
11 EBCM was supposed to transfer to Velocity was indeed trading in the Velocity pool.  
12 Consequently, EBCM issued false statements to the Velocity pool participants that overstated the  
13 value of participants' shares of the pool.  
14

15 **G. EBCM Acted As A CPO Without Registration and Willfully Concealed That**  
16 **Activity**

17 52. In or around October 2007, Wilson applied for and received futures trading  
18 capability in an account held in the name of Velocity at a registered futures commission  
19 merchant ("FCM") referred to herein as "FCM A."

20 53. As a part of FCM A's compliance procedures, on October 1, 2007, FCM A  
21 emailed Wilson (as Velocity's representative) asking a series of questions intended to ascertain  
22 whether Velocity was acting in a capacity requiring registration under the Act.

23 54. Wilson ignored FCM A's inquiry. As a result, on November 12, 2007, FCM A  
24 sent Wilson a second copy of its October 1 communication, this time adding that a response was  
25 required by November 26, 2007, and that if it did not arrive, the Velocity account would be  
26 placed in "liquidation only" status. Wilson again ignored FCM A's inquiry, and on December  
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1 11, 2007, the Velocity account was placed in “liquidation only” status, such that EBCM could no  
2 longer trade the account other than to liquidate its open positions.

3 55. Shortly thereafter, on January 24, 2008, Wilson applied to open a new futures  
4 account in the name of Velocity at a second FCM referred to herein as “FCM B.” Wilson failed  
5 to disclose to FCM B that Velocity was a pool, and opened the account in the name of Velocity  
6 as a “Corporation/LLC” account rather than selecting the available option to open an account for  
7 a “commodity pool.”  
8

9 56. As a part of FCM B’s compliance procedures, Wilson was asked to sign a letter  
10 confirming that “our account is being traded with corporate funds only,” and that “[w]e also do  
11 not solicit customer funds.” Wilson falsely certified these statements to be true.

12 **H. EBCM and EBI Constituted a Common Enterprise**

13 57. EBCM and EBI operated as a common enterprise, and each is liable for the  
14 unlawful conduct of the other.

15 58. EBCM and EBI operated under the common ownership and control of Wilson,  
16 Settles, and, for a portion of the entities’ existence, Freeman.

17 59. EBCM and EBI shared common office space at 4370 La Jolla Village Drive, Suite  
18 400, in San Diego, California.

19 60. With respect to the Vortex and Velocity pool products, EBCM told participants  
20 that EBCM would maintain custody of all participant assets. The participants’ Collateral  
21 Reserve assets, however, were held by EBI rather than EBCM.  
22

23 61. With respect to the EBFXMA product, EBCM told clients that Collateral Reserve  
24 assets would be held in an “Elsworth Berg Collateral Reserve Trust” that EBCM would manage,  
25 and for which EBCM would act as trustee. Collateralized EBFXMA clients executed a Trust  
26 Agreement with EBCM. The “Elsworth Berg Collateral Reserve Trust” never actually held any  
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1 assets, and the Collateral Reserve assets intended for use as the EBFXMA clients' Collateral  
2 Reserve were instead held by EBI.

3 62. EBCM was the first of many related entities formed that operated under the  
4 common control of Wilson, Freeman and Settles, including Elsworth Berg Inc., Elsworth Berg  
5 Currency Master Fund LP, Vortex Currency Fund LP, Vortex Currency Group LLC, Velocity  
6 Trading Group LLC, Elsworth Berg FX LLC, and EB Trading Solutions. EBCM operated at the  
7 center of these entities, and collected EBCM's earnings (in the form of performance and  
8 management fees) from entities including but not limited to Velocity and Vortex. Many of the  
9 operational expenses for the EBCM-related entities, however, including the salaries of Wilson,  
10 Freeman, and Settles, were paid not by EBCM, but by EBI.

## 12 **VI. Violations of the Commodity Exchange Act**

### 13 **COUNT ONE**

#### 14 **Violations of Section 4b(a)(2)(i), (iii) of the Act and** 15 **Section 4b(a)(1)(A), (C) of the Act, as amended by the CRA:** 16 **Futures Fraud by Misrepresentation by EBCM, EBI, and Wilson**

17 63. Paragraphs 1 through 62 are realleged and incorporated herein by reference.

18 64. Prior to being amended by the CRA, Section 4b(a)(2)(i), (iii) of the Act, 7 U.S.C.  
19 § 6b(a)(2)(i), (iii) (2006), made it unlawful for any person:

20 in or in connection with any order to make, or the making of, any contract of sale  
21 of any commodity for future delivery, made, or to be made, for or on behalf of  
22 any other person . . . : (i) to cheat or defraud or attempt to cheat or defraud such  
23 other person; . . . [or] (iii) willfully to deceive or attempt to deceive such other  
24 person by any means whatsoever in regard to any such order or contract or the  
disposition or execution of any such order or contract, or in regard to any act of  
agency performed with respect to such order or contract for such person [with  
respect to acts occurring before June 18, 2008].

25 65. Similarly, Section 4b(a)(1)(A), (C) of the Act, as amended by the CRA, to be  
26 codified at 7 U.S.C. § 6b(a)(1)(A), (C), makes it unlawful for any person, in or in connection  
27 with any order to make, or the making of, any contract of sale of any commodity in interstate  
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1 commerce or for future delivery that is made, or to be made, on or subject to the rules of a  
2 designated contract market, for or on behalf of any other person:

3 in or in connection with any order to make, or the making of, any contract of sale  
4 of any commodity in interstate commerce or for future delivery that is made, or to  
5 be made, or subject to the rules of a designated contract market, for or on behalf  
6 of any other person . . . : (A) to cheat or defraud or attempt to cheat or defraud the  
7 other person; . . . [or] (C) willfully to deceive or attempt to deceive the other  
8 person by any means whatsoever in regard to any order or contract or the  
9 disposition or execution of any order or contract, or in regard to any act of agency  
10 performed, with respect to any order or contract for . . . the other person [with  
11 respect to acts occurring on or after June 18, 2008].

12 66. In connection with their trading of futures, EBCM and Wilson violated Section  
13 4b(a)(2)(i), (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect to acts occurring  
14 before June 18, 2008, and Section 4b(a)(1)(A), (C) of the Act, as amended by the CRA, to be  
15 codified at 7 U.S.C. § 6b(a)(1)(A), (C), with respect to acts occurring on or after June 18, 2008,  
16 by willfully or recklessly: (a) misrepresenting to participants and prospective participants in  
17 Velocity that their principal investments were secured or guaranteed in various ways by use of  
18 the Collateral Reserve; and/or (b) failing to disclose to participants that the Collateral Reserve  
19 could not satisfy its guarantee obligations. Defendants' misrepresentations and omissions were  
20 material in that reasonable investors would consider them important in making investment  
21 decisions.

22 67. Wilson controlled EBCM and EBI, and did not act in good faith or knowingly  
23 induced, directly or indirectly, the acts constituting those entities' violations alleged in this count.  
24 Wilson is therefore liable for EBCM's and EBI's violations of Section 4b(a)(2)(i), (iii) of the  
25 Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect to acts occurring before June 18, 2008, and  
26 for EBCM's and EBI's violations of Section 4b(a)(1)(A), (C) of the Act, as amended by the  
27 CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C), with respect to acts occurring on or after June  
28 18, 2008, as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

1 68. Wilson was acting as an agent of EBCM and EBI when he violated the Act. As a  
2 result, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation  
3 1.2, 17 C.F.R. § 1.2 (2011), EBCM and EBI are liable for the acts constituting Wilson's  
4 violations of Section 4b(a)(2)(i), (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect  
5 to acts occurring before June 18, 2008, and for the acts constituting Wilson's violations of  
6 Section 4b(a)(1)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §  
7 6b(a)(1)(A), (C), with respect to acts occurring on or after June 18, 2008.

8  
9 69. EBI participated in a Common Enterprise together with EBCM and is thus liable  
10 for EBCM's violations of Section 4b(a)(2)(i), (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006),  
11 with respect to acts occurring before June 18, 2008, and for EBCM's violations of Section  
12 4b(a)(1)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A),  
13 (C), with respect to acts occurring on or after June 18, 2008,

14 70. Each act of misrepresentation or omission of a material fact, including but not  
15 limited to those specifically alleged herein, is alleged as a separate and distinct violation of  
16 Section 4b(a)(2)(i), (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect to acts  
17 occurring before June 18, 2008, and of Section 4b(a)(1)(A), (C) of the Act, as amended, by the  
18 CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C), with respect to acts occurring on or after June  
19 18, 2008.  
20

21 **COUNT TWO**

22 **Violations of Section 4b(a)(2)(A), (C) of the Act,**  
23 **as amended by the CRA:**  
24 **Forex Fraud by Misrepresentation by All Defendants**

25 71. Paragraphs 1 through 62 are realleged and incorporated herein by reference.

26 72. As of June 18, 2008, Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA,  
27 to be codified at 7 U.S.C. § 6b(a)(2)(A), (C), make it unlawful for any person:  
28

1 in or in connection with any order to make, or the making of, any contract of sale  
2 of any commodity for future delivery, or other agreement, contract, or transaction  
3 subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for  
4 or on behalf of, or with, any other person, other than or subject to the rules of a  
5 designated contract market – (A) to cheat or defraud or attempt to cheat or  
6 defraud the other person; . . . [or] (C) willfully to deceive or attempt to deceive  
7 the other person by any means whatsoever in regard to any order or contract or  
8 the disposition or execution of any order or contract, or in regard to any act of  
9 agency performed, with respect to any order or contract for . . . the other person . .  
10 ..

7 73. In connection with their off-exchange retail forex transactions, Defendants  
8 violated Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C.  
9 § 6b(a)(2)(A), (C), by willfully or recklessly: (a) misrepresenting to customers and prospective  
10 customers in Vortex and EBFXMA that their principal investments were secured or guaranteed  
11 in various ways by use of the Collateral Reserve; and/or (b) failing to disclose to customers that  
12 the Collateral Reserve could not satisfy its guarantee obligations. Defendants'  
13 misrepresentations and omissions were material in that reasonable investors would consider them  
14 important in making investment decisions.  
15

16 74. Wilson controlled EBCM, EBI, and EBFX, and did not act in good faith or  
17 knowingly induced, directly or indirectly, the acts constituting those entities' violations alleged  
18 in this count. Wilson is therefore liable for EBCM's, EBI's, and EBFX's violations of Section  
19 4b(a)(2)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A),  
20 (C) as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).  
21

22 75. Wilson was acting as an agent of EBCM, EBI, and EBFX when he violated the  
23 Act. As a result, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and  
24 Regulation 1.2, 17 C.F.R. § 1.2 (2011), EBCM, EBI, and EBFX are liable for the acts  
25 constituting Wilson's violations Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA, to  
26 be codified at 7 U.S.C. § 6b(a)(2)(A), (C).  
27  
28



1 81. Wilson was acting as an agent of EBCM when he violated the Act. As a result,  
2 pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17  
3 C.F.R. § 1.2 (2011), EBCM is liable for the acts constituting Wilson's violations of Section  
4 4b(a)(2)(i), (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect to acts occurring  
5 before June 18, 2008, and for the acts constituting Wilson's violations of Section 4b(a)(1)(A),  
6 (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), with  
7 respect to acts occurring on or after June 18, 2008.  
8

9 82. EBI participated in a Common Enterprise together with EBCM and is therefore  
10 liable for EBCM's violations of Section 4b(a)(2)(i), (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii)  
11 (2006), with respect to acts occurring before June 18, 2008, and for EBCM's violations of  
12 Section 4b(a)(1)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C.  
13 § 6b(a)(1)(A), (C), with respect to acts occurring on or after June 18, 2008. Each act of  
14 misappropriating pool participant funds, including but not limited to those specifically alleged  
15 herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i), (iii) of the Act,  
16 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect to acts occurring before June 18, 2008, and of  
17 Section 4b(a)(1)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C.  
18 § 6b(a)(1)(A), (C), with respect to acts occurring on or after June 18, 2008.  
19

#### 20 **COUNT FOUR**

#### 21 **Violations of Section 4b(a)(2)(ii) of the Act and** 22 **Section 4b(a)(1)(B) of the Act, as amended by the CRA:** 23 **Futures Fraud by False Statements by EBCM, EBI, and Wilson**

24 83. Paragraphs 1 through 62 are realleged and incorporated herein by reference.

25 84. Prior to being amended by the CRA, Section 4b(a)(2)(ii) of the Act, 7 U.S.C.  
26 § 6b(a)(2)(ii) (2006), made it unlawful for any person, in or in connection with any order to  
27 make, or the making of, any futures contract, for or on behalf of any other person "willfully to  
28

1 make or cause to be made to such other person any false report or statement . . . , or willfully to  
2 enter or cause to be entered for such person any false record,” with respect to acts occurring  
3 before June 18, 2008.

4 85. Similarly, Section 4b(a)(1)(B) of the Act, as amended by the CRA, to be codified  
5 at 7 U.S.C. § 6b(a)(1)(B), makes it unlawful for any person, in or in connection with any order to  
6 make, or the making of, any contract of sale of any commodity in interstate commerce or for  
7 future delivery that is made, or to be made, on or subject to the rules of a designated contract  
8 market, for or on behalf of any other person “willfully to make or cause to be made to the other  
9 person any false report or statement or willfully to enter or cause to be entered for the other  
10 person any false record,” with respect to acts occurring on or after June 18, 2008.

12 86. EBCM and Wilson violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii)  
13 (2006), with respect to acts occurring before June 18, 2008, and Section 4b(a)(1)(B) of the Act,  
14 as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(B), with respect to acts occurring  
15 on or after June 18, 2008, in that they willfully made, or caused to be made, false statements to  
16 Velocity pool participants that overstated the value of participants’ interests in the pool.

17 87. Wilson controlled EBCM, a CPO, and did not act in good faith or knowingly  
18 induced, directly or indirectly, the acts constituting EBCM’s violations alleged in this count.  
19 Wilson is therefore liable for EBCM’s violations of Section 4b(a)(2)(ii) of the Act, 7 U.S.C.  
20 § 6b(a)(2)(ii) (2006), with respect to acts occurring before June 18, 2008, and for EBCM’s  
21 violations of Section 4b(a)(1)(B) of the Act, as amended by the CRA, to be codified at  
22 7 U.S.C. § 6b(a)(1)(B), with respect to acts occurring on or after June 18, 2008, as a controlling  
23 person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

25 88. Wilson was acting as an agent of EBCM, a CPO, when he violated the Act.  
26 Therefore, EBCM, as Wilson’s principal, is liable for the acts constituting Wilson’s violations of  
27  
28

1 Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006), with respect to acts occurring  
2 before June 18, 2008, and for the acts constituting Wilson's violations of Section 4b(a)(1)(B) of  
3 the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(B), with respect to acts  
4 occurring on or after June 18, 2008, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C.  
5 § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

6  
7 89. EBI participated in a Common Enterprise together with EBCM and is therefore  
8 liable for EBCM's violations of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006),  
9 with respect to acts occurring before June 18, 2008, and for EBCM's violations of Section  
10 4b(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(B), with  
11 respect to acts occurring on or after June 18, 2008.

12 90. Each act of making or causing others to make a false report or statement,  
13 including, but not limited to, those specifically alleged herein, is alleged as a separate and  
14 distinct violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006), with respect to  
15 acts occurring before June 18, 2008, and of Section 4b(a)(1)(B) of the Act, as amended by the  
16 CRA, to be codified at 7 U.S.C. § 6b(a)(1)(B), with respect to acts occurring on or after June 18,  
17 2008.

18  
19 **COUNT FIVE**

20 **Violations of Section 4o(1)(A), (B) of the Act:**  
**Pool Fraud by a CPO and AP of a CPO by EBCM, EBI, and Wilson**

21 91. Paragraphs 1 through 62 are realleged and incorporated herein by reference.

22 92. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), in relevant part, makes it  
23 unlawful for a CPO or an AP of a CPO, by use of the mails or any means or instrumentality of  
24 interstate commerce, directly or indirectly: "(A) to employ any device, scheme or artifice to  
25 defraud any . . . participant; or (B) to engage in any transaction, practice or course of business  
26 which operates as a fraud or deceit upon any . . . participant or prospective . . . participant."  
27  
28

1           93.     EBCM acted as a CPO in that it engaged in a business that is of the nature of an  
2 investment trust, syndicate or similar form of enterprise, and in connection therewith, solicited,  
3 accepted or received funds, securities or property from others for the purpose of trading in  
4 commodities for future delivery on or subject to the rules of any contract market.

5           94.     Wilson acted as an AP of a CPO in that, as an agent of EBCM, he solicited and  
6 accepted funds, securities or property for EBCM.

7           95.     EBCM and Wilson violated Section 4o(1)(A), (B) of the Act, 7 U.S.C.  
8 § 6o(1)(A), (B) (2006), in that, as a CPO and AP of a CPO, they directly or indirectly employed  
9 a device, scheme or artifice to defraud pool participants and engaged in transactions, practices or  
10 a course of business which operated as a fraud or deceit upon pool participants by acts including  
11 but not limited to: (a) willfully or recklessly misrepresenting to participants and prospective  
12 participants in the Velocity pool that their principal investments were secured or guaranteed in  
13 various ways by use of the Collateral Reserve; (b) willfully or recklessly failing to disclose to  
14 participants that the Collateral Reserve could not satisfy its guarantee obligations;  
15 (c) misappropriating at least \$72,000 of Velocity participants' funds; and (d) willfully making or  
16 causing to be made false statements to Velocity pool participants that overstated the value of  
17 participants' interests in the pool.  
18

19           96.     EBCM's and Wilson's misrepresentations were material in that reasonable  
20 investors would consider them important in making investment decisions. EBCM's and  
21 Wilson's omissions were material because EBCM's and Wilson's affirmative statements would  
22 mislead participants or prospective participants unless the full truth was disclosed.

23           97.     EBCM and Wilson engaged in such acts by use of the mails and other means or  
24 instrumentalities of interstate commerce.  
25  
26  
27  
28

1 98. Wilson controlled EBCM, a CPO, and did not act in good faith or knowingly  
2 induced, directly or indirectly, the acts constituting EBCM's violations alleged in this count.  
3 Wilson is therefore liable for EBCM's violations of Section 4o(1)(A), (B) of the Act, 7 U.S.C.  
4 § 6o(1)(A), (B) (2006), as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. §  
5 13c(b) (2006).

6 99. Wilson was acting as an agent of EBCM, a CPO, when he violated the Act.  
7 Therefore, EBCM, as Wilson's principal, is liable for the acts constituting Wilson's violations of  
8 Section 4o(1)(A), (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2006), pursuant to Section 2(a)(1)(B)  
9 of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

10 100. EBI participated in a Common Enterprise together with EBCM and is therefore  
11 liable for the acts constituting EBCM's violations alleged in this count. EBI is therefore liable  
12 for EBCM's violations of Section 4o(1)(A), (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2006).

13 101. Each misrepresentation or omission of a material fact, and each act of  
14 misappropriating pool participant funds or making or causing others to make false statements to  
15 pool participants, including but not limited to those specifically alleged herein, is alleged as a  
16 separate and distinct violation of Section 4o(1)(A), (B) of the Act, 7 U.S.C. § 6o(1)(A), (B)  
17 (2006).  
18

19  
20 **COUNT SIX**

21 **Violations of Section 4m(1) of the Act:**  
22 **Failure to Register as a CPO by EBCM and Wilson**

23 102. Paragraphs 1 through 62 are realleged and incorporated herein by reference.

24 103. With certain exemptions and exclusions not applicable here, it is unlawful for any  
25 CPO to make use of the mails or other means or instrumentalities of interstate commerce in  
26 connection with its CPO business unless registered with the Commission pursuant to Section  
27 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).  
28



1 110. Wilson violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), in that he acted  
2 as an AP of a CPO by soliciting participants and accepting funds for Velocity without the benefit  
3 of registration as an AP of a CPO.

4 111. EBCM violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), in that, acting  
5 as a CPO, EBCM allowed Wilson to act as its AP when it knew or should have known that  
6 Wilson was not registered as an AP.

7  
8 **VII. Relief Requested**

9 WHEREFORE, the Commission respectfully requests that this Court, as authorized by  
10 Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers:

11 A. Find:

12 1. Defendants EBCM, EBI, and Wilson liable for violating Section  
13 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), with respect to acts  
14 occurring before June 18, 2008, and Section 4b(a)(1)(A)-(C) of the Act, as amended by  
15 the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), with respect to acts occurring on  
16 or after June 18, 2008; and Section 4o(1)(A), (B) of the Act, 7 U.S.C. § 6o(1)(A), (B)  
17 (2006);

18 2. all Defendants liable for violating Section 4b(a)(2)(A), (C) of the Act, as  
19 amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A), (C);

20 3. Defendants EBCM and Wilson liable for violating Sections 4m(1) and  
21 4k(2) of the Act, 7 U.S.C. §§ 6m(1) and 6k(2) (2006);

22 B. Enter a statutory restraining order with notice and/or order of preliminary  
23 injunction pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006), restraining  
24 Defendants and all persons insofar as they are acting in the capacity of Defendants' agents,  
25 servants, successors, employees, assigns and attorneys, and all persons insofar as they are acting  
26  
27  
28

1 in active concert or participation with Defendants who receive actual notice of such order by  
2 personal service or otherwise, from directly or indirectly:

3           1.       destroying, mutilating, concealing, altering or disposing of any books and  
4 records, documents, correspondence, brochures, manuals, electronically stored data, tape  
5 records or other property of Defendants, wherever located, including all such records  
6 concerning Defendants' business operations;

7           2.       refusing to permit authorized representatives of the Commission to  
8 inspect, when and as requested, any books and records, documents, correspondence,  
9 brochures, manuals, electronically stored data, tape records or other property of  
10 Defendants, wherever located, including all such records concerning Defendants'  
11 business operations; and

12           3.       withdrawing, transferring, removing, dissipating, concealing or disposing  
13 of, in any manner, any funds, assets or other property, wherever situated, including, but  
14 not limited to, all funds, personal property, money or securities held in safes or safety  
15 deposit boxes and all funds on deposit in any financial institution, bank or savings and  
16 loan account held by, under the actual or constructive control of or in the name of  
17 Defendants;

18           C.       Enter an order directing that Defendants make an accounting to the Court of all of  
19 Defendants' assets and liabilities, together with all funds Defendants received from and paid to  
20 pool participants and other persons in connection with forex, commodity futures, and commodity  
21 futures options transactions or purported forex, commodity futures, and commodity futures  
22 options transactions, including the names, mailing addresses, email addresses and telephone  
23 numbers of any such persons from whom they received such funds from January 1, 2006 to the  
24 date of such accounting, and all disbursements for any purpose whatsoever of funds received  
25  
26  
27  
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1 from pool participants or other customers or investors, including salaries, commissions, fees,  
2 loans and other disbursements of money and property of any kind, from January 1, 2006 to and  
3 including the date of such accounting;

4 D. Enter orders of preliminary and permanent injunction enjoining:

5 1. Defendants EBCM, EBI, and Wilson, and all persons insofar as they are  
6 acting in the capacity of their agents, servants, employees, successors, assigns and  
7 attorneys, and all persons insofar as they are acting in active concert or participation with  
8 Defendants who receive actual notice of such order by personal service or otherwise,  
9 from directly or indirectly engaging in conduct in violation of Section 4b(a)(1)(A)-(C) of  
10 the Act, as amended by the CRA, and the Dodd-Frank Act, to be codified at 7 U.S.C.

11 § 6b(a)(1)(A)-(C); and Section 4o(1)(A), (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2006);

12 2. all Defendants and all persons insofar as they are acting in the capacity of  
13 their agents, servants, employees, successors, assigns and attorneys, and all persons  
14 insofar as they are acting in active concert or participation with Defendants who receive  
15 actual notice of such order by personal service or otherwise, from directly or indirectly  
16 engaging in conduct in violation of Section 4b(a)(2)(A), (C) of the Act, as amended by  
17 the CRA, and the Dodd-Frank Act, to be codified at 7 U.S.C. § 6b(a)(2)(A), (C);

18 3. Defendants EBCM and Wilson, and all persons insofar as they are acting  
19 in the capacity of their agents, servants, employees, successors, assigns and attorneys,  
20 and all persons insofar as they are acting in active concert or participation with  
21 Defendants who receive actual notice of such order by personal service or otherwise,  
22 from directly or indirectly engaging in conduct in violation of Sections 4m(1) and 4k(2)  
23 of the Act, 7 U.S.C. §§ 6m(1) and 6k(2) (2006);  
24  
25  
26  
27  
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1 E. Enter further orders of preliminary and permanent injunction enjoining all

2 Defendants from:

3 1. trading on or subject to the rules of any registered entity (as that term is  
4 defined in Section 1a of the Act, to be codified at 7 U.S.C. § 1a;

5 2. entering into any transactions involving commodity futures, options on  
6 commodity futures, commodity options (as that term is defined in Commission  
7 Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2011)) (“commodity options”) and/or  
8 foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as  
9 amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex  
10 contracts”) for any personal or proprietary account or for any account in which they have  
11 a direct or indirect interest;

12 3. having any commodity futures, options on commodity futures, commodity  
13 options and/or forex contracts traded on their behalf

14 4. controlling or directing the trading for or on behalf of any other person or  
15 entity, whether by power of attorney or otherwise, in any account involving commodity  
16 futures, options on commodity futures, commodity options and/or forex contracts

17 5. soliciting, receiving or accepting any funds from any person for the  
18 purpose of purchasing or selling any commodity futures, options on commodity futures,  
19 commodity options and/or forex contracts;

20 6. applying for registration or claiming exemption from registration with the  
21 Commission in any capacity, and engaging in any activity requiring such registration or  
22 exemption from registration with the Commission, except as provided for in Regulation  
23 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011);  
24  
25  
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1           7.       acting as a principal (as that term is defined in Regulation 3.1(a), 17  
2       C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person registered,  
3       exempted from registration or required to be registered with the Commission, except as  
4       provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011);

5       F.       Enter an order requiring Defendants to disgorge to any officer appointed or  
6       directed by the Court, or directly to customers of the Elsworth Products, all benefits received,  
7       including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits  
8       derived, directly or indirectly, from acts or practices which constitute violations of the Act as  
9       described herein, including pre-judgment and post-judgment interest;

10       G.       Enter an order directing Defendants and any successors thereof to rescind,  
11       pursuant to such procedures as the Court may order, all contracts and agreements, whether  
12       implied or express, entered into between Defendants and any of the customers of the Elsworth  
13       Products whose funds were received by Defendants as a result of the acts and practices which  
14       constituted violations of the Act as described herein;

15       H.       Enter an order directing Defendants to make full restitution to every person or  
16       entity whose funds Defendants received or caused another person or entity to receive as a result  
17       of acts and practices that constituted violations of the Act as described herein, and pre- and post-  
18       judgment interest thereon from the date of such violations;

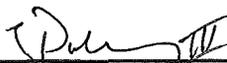
19       I.       Enter an order directing each Defendant to pay a civil monetary penalty in the  
20       amount of not more than the greater of (1) triple the monetary gain to Defendants for each  
21       violation of the Act; or (2) \$120,000 for each violation of the Act committed before October 22,  
22       2004, \$130,000 for each violation of the Act committed from October 23, 2004 through October  
23       22, 2008, and \$140,000 for each violation of the Act committed on or after October 23, 2008;

1 J. Enter an order requiring Defendants to pay costs and fees as permitted by  
2 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

3 K. Enter an order providing such other and further relief as this Court may deem  
4 necessary and appropriate under the circumstances.

5  
6 Date: July 27, 2011

7 Respectfully submitted,

8   
9 Theodore Z. Polley III  
10 Attorney for Plaintiff  
11 Email: [tpolley@cftc.gov](mailto:tpolley@cftc.gov)

12 /s/ William P. Janulis  
13 Attorney for Plaintiff  
14 Email: [wjanulis@cftc.gov](mailto:wjanulis@cftc.gov)  
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JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

U.S. Commodity Futures Trading Commission

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
Theodore Polley III, U.S. Commodity Futures Trading Commission,  
525 W. Monroe St., Suite 1100, Chicago, IL 60661 312-596-0551

**DEFENDANTS**

Douglas Elsworth Wilson, Elsworth Berg Capital Management LLC, Elsworth Berg Inc., and Elsworth Berg FX LLC

County of Residence of First Listed Defendant San Diego  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) '11 CV1651 WQHBLM  
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**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

7 U.S.C. 1776(b)  
Brief description of cause:  
Violations of the Commodity Exchange Act

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 07/27/2011 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_